

restoration objectives that are specific to the injuries. These objectives should clearly specify the desired outcome, and the performance criteria by which successful restoration will be judged. Performance criteria may include structural, functional, temporal, and/or other demonstrable factors. Trustees must, at a minimum, determine what criteria will:

(i) Constitute success, such that responsible parties are relieved of responsibility for further restoration actions; or

(ii) Necessitate corrective actions in order to comply with the terms of a restoration plan or settlement agreement.

(3) The monitoring component to the Draft Restoration Plan should address such factors as duration and frequency of monitoring needed to gauge progress and success, level of sampling needed to detect success or the need for corrective action, and whether monitoring of a reference or control site is needed to determine progress and success. Reasonable monitoring and oversight costs cover those activities necessary to gauge the progress, performance, and success of the restoration actions developed under the plan.

(c) *Public review and comment.* The nature of public review and comment on the Draft and Final Restoration Plans will depend on the nature of the incident and any applicable federal trustee NEPA requirements, as described in §§ 990.14(d) and 990.23 of this part.

(d) *Final Restoration Plan.* Trustees must develop a Final Restoration Plan that includes the information specified in paragraph (a) of this section, responses to public comments, if applicable, and an indication of any changes made to the Draft Restoration Plan.

**§ 990.56 Restoration selection—use of a Regional Restoration Plan or existing restoration project.**

(a) *General.* Trustees may consider using a Regional Restoration Plan or existing restoration project where such a plan or project is determined to be the preferred alternative among a range of feasible restoration alternatives for an incident, as determined under § 990.54 of this part. Such plans or projects must be capable of fulfilling

OPA's intent for the trustees to restore, rehabilitate, replace, or acquire the equivalent of the injured natural resources and services and compensate for interim losses.

(b) *Existing plans or projects—(1) Considerations.* Trustees may select a component of a Regional Restoration Plan or an existing restoration project as the preferred alternative, provided that the plan or project:

(i) Was developed with public review and comment or is subject to public review and comment under this part;

(ii) Will adequately compensate the environment and public for injuries resulting from the incident;

(iii) Addresses, and is currently relevant to, the same or comparable natural resources and services as those identified as having been injured; and

(iv) Allows for reasonable scaling relative to the incident.

(2) *Demand.* (i) If the conditions of paragraph (b)(1) of this section are met, the trustees must invite the responsible parties to implement that component of the Regional Restoration Plan or existing restoration project, or advance to the trustees the trustees' reasonable estimate of the cost of implementing that component of the Regional Restoration Plan or existing restoration project.

(ii) If the conditions of paragraph (b)(1) of this section are met, but the trustees determine that the scale of the existing plan or project is greater than the scale of compensation required by the incident, trustees may only request funding from the responsible parties equivalent to the scale of the restoration determined to be appropriate for the incident of concern. Trustees may pool such partial recoveries until adequate funding is available to successfully implement the existing plan or project.

(3) *Notice of Intent To Use a Regional Restoration Plan or Existing Restoration Project.* If trustees intend to use an appropriate component of a Regional Restoration Plan or existing restoration project, they must prepare a Notice of Intent to Use a Regional Restoration Plan or Existing Restoration Project. Trustees must make a copy of the notice publicly available. The notice must include, at a minimum:

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(i) A description of the nature, degree, and spatial and temporal extent of injuries; and

(ii) A description of the relevant component of the Regional Restoration Plan or existing restoration project; and

(iii) An explanation of how the conditions set forth in paragraph (b)(1) of this section are met.

### Subpart F—Restoration Implementation Phase

#### § 990.60 Purpose.

The purpose of this subpart is to provide a process for implementing restoration.

#### § 990.61 Administrative record.

(a) *Closing the administrative record for restoration planning.* Within a reasonable time after the trustees have completed restoration planning, as provided in §§ 990.55 and 990.56 of this part, they must close the administrative record. Trustees may not add documents to the administrative record once it is closed, except where such documents:

(1) Are offered by interested parties that did not receive actual or constructive notice of the Draft Restoration Plan and the opportunity to comment on the plan;

(2) Do not duplicate information already contained in the administrative record; and

(3) Raise significant issues regarding the Final Restoration Plan.

(b) *Opening an administrative record for restoration implementation.* Trustees may open an administrative record for implementation of restoration, as provided in § 990.45 of this part. The costs associated with the administrative record are part of the costs of restoration. Ordinarily, the administrative record for implementation of restoration should document, at a minimum, all Restoration Implementation Phase decisions, actions, and expenditures, including any modifications made to the Final Restoration Plan.

#### § 990.62 Presenting a demand.

(a) *General.* After closing the administrative record for restoration planning, trustees must present a written

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demand to the responsible parties. Delivery of the demand should be made in a manner that establishes the date of receipt by the responsible parties.

(b) *When a Final Restoration Plan has been developed.* Except as provided in paragraph (c) of this section and in § 990.14(c) of this part, the demand must invite the responsible parties to either:

(1) Implement the Final Restoration Plan subject to trustee oversight and reimburse the trustees for their assessment and oversight costs; or

(2) Advance to the trustees a specified sum representing all trustee direct and indirect costs of assessment and restoration, discounted as provided in § 990.63(a) of this part.

(c) *Regional Restoration Plan or existing restoration project.* When the trustees use a Regional Restoration Plan or an existing restoration project under § 990.56 of this part, the demand will invite the responsible parties to implement a component of a Regional Restoration Plan or existing restoration project, or advance the trustees' estimate of damages based on the scale of the restoration determined to be appropriate for the incident of concern, which may be the entire project or a portion thereof.

(d) *Response to demand.* The responsible parties must respond within ninety (90) calendar days in writing by paying or providing binding assurance they will reimburse trustees' assessment costs and implement the plan or pay assessment costs and the trustees' estimate of the costs of implementation.

(e) *Additional contents of demand.* The demand must also include:

(1) Identification of the incident from which the claim arises;

(2) Identification of the trustee(s) asserting the claim and a statement of the statutory basis for trusteeship;

(3) A brief description of the injuries for which the claim is being brought;

(4) An index to the administrative record;

(5) The Final Restoration Plan or Notice of Intent to Use a Regional Restoration Plan or Existing Restoration Project; and

(6) A request for reimbursement of: